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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/652,498	09/02/2003	Randolf Von Oepen	HO-US005378A	2721
22919 7590 05/04/2007 GLOBAL IP COUNSELORS, LLP 1233 20TH STREET, NW, SUITE 700 WASHINGTON, DC 20036-2680			EXAMINER PELLEGRINO, BRIAN E	
			ART UNIT 3738	PAPER NUMBER
			MAIL DATE 05/04/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/652,498

Applicant(s)

VON OEPEN, RANDOLF

Examiner

Brian E. Pellegrino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,8,10,13,16 and 21-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,8,10,13,16 and 21-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3,8,21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruiz (6120534) in view of Glastra et al. (EP 0779062). Ruiz discloses (Figs. 2A,2B) a stent configured and arranged to expand with first and second expanding “essentially tubular” sections **11,12** and an “essentially” reduced expandable tubular section **13** coupled to the first and second portions. The examiner is interpreting the claimed elements “essentially tubular” in this way: something that is in the form of a conduit having a hollow or cylindrical like cross-section. Claims in a pending application should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974). See also *In re Morris*, Fed. Cir. 1997 127 F3d 1048, 1054,1055.

Ruiz shows (Fig. 3) a catheter **21** having balloons to expand the stent with reduced expandability. Ruiz also shows (Figs. 5B,5C) a liquid impermeable cover **52** on the stent. Ruiz discloses the covering is an elastomeric material, col. 5 lines 47-49. Ruiz discloses the cover is PTFE, col. 3, lines 40,41. However, Ruiz fails to disclose the expansion is a done by a single balloon. Glastra et al. show (Fig. 6) a stent-catheter arrangement having a balloon **26** with two fully expandable sections **27** and a section of reduced expandability between the expandable sections and thus has first and second tapering portions. It is inherent it has some predetermined length and angles since it is a solid state of matter. It would have been obvious to one of ordinary skill in the art to

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use a single balloon as taught by Glastra with the stent of Ruiz such that the surgeon has more control in delivering the stent as opposed to manipulating multiple balloons and results in the balloon having "essentially tubular sections" that conform to the stent's configuration.

Claims 1-3,8,13,16,23,24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glastra et al. (EP 0779062) in view of Jaeger (DE 19509464).

Glastra et al. show (Fig. 6) a stent-catheter arrangement having a balloon 26 with two fully expandable "essentially tubular" sections 27 and an "essentially tubular" section of reduced expandability between the expandable sections. The examiner is interpreting the claimed elements "essentially tubular" in this way: something that is in the form of a conduit having a hollow or cylindrical like cross-section. Claims in a pending application should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974). See also *In re Morris*, Fed. Cir. 1997 127 F3d 1048, 1054, 1055.

However, Glastra does not disclose a liquid impermeable cover over the stent or a stiffening element for forming a reduced expandable section. Jaeger teaches (Fig. 11) a liquid impermeable cover 6 over stent. Jaeger also teaches (Fig. 3) a stiffening element 5 can be used to form a section of reduced expandability. It would have been obvious to one of ordinary skill in the art to use a blood impermeable cover on the stent and a stiffening element as taught by Jaeger with the stent-catheter system of Glastra et al. in order to provide an outer surface that does not allow blood leakage and to provide a throttle portion to increase blood flow to reduce the likelihood of plaque buildup. Please note claims 13,16,23,24 are being interpreted as product-by-process claims and are not

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construed as being limited to the product formed by the specific processes recited. The balloon of Glastra is fully capable of being made to incorporate the stiffening element with the balloon.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Glastra (EP 0779062) in view of Jaeger (DE 19509464) as applied to claims 1-3 above, and further in view of Tower (US 5695498). Glastra in view of Jaeger is explained supra. However, Glastra as modified by Jaeger do not disclose the balloon made of stiffened balloon material. Tower discloses that the balloon is formed of stiffened balloon material and that the reduced expandability section is formed during balloon production, col. 3, lines 21-34. It would have been obvious to one of ordinary skill in the art to use stiffened balloon material and produce this reduce expandability section during balloon production as taught by Tower with the catheter-stent system of Glastra as modified by Jaeger in order to strengthen the balloon such that the chance of the balloon collapsing has been greatly reduced.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Glastra (EP 0779062) in view of Jaeger (DE 19509464) as applied to claim 13 above, and further in view of Crocker et al. (US 5843116). Glastra in view of Jaeger is explained supra. However, Glastra as modified by Jaeger fail to disclose the stiffening element is integrated in the balloon. Crocker et al. show (Fig. 3) that stiffening material is integrated into the balloon to limit the expansion of the balloon in certain areas, col. 5, lines 29-49. It would have been obvious to one of ordinary skill in the art to utilize the integrated stiffening material as taught by Crocker et al. with the balloon catheter of

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Glastra as modified by Jaeger having a stent such that a proper profile can be obtained by integrating the stiffening element in the balloon and provide the matching contour to the vessel site.

Response to Arguments

Applicant's arguments filed 2/5/07 have been fully considered but they are not persuasive. Applicant argues that Ruiz does not disclose "essentially tubular" sections. However, first it should be noted the claimed sections are not defined as to any specific length, such that the reduced section defined in Ruiz's stent, clearly can be a "reduced expandable section." Second, the sections claimed as "essentially tubular" is not limited to something with a constant diameter, since Applicant has not defined what "essentially tubular" is limited to. Thus, sections of the Ruiz stent can be considered to have "essentially tubular" diameters. Applicant additionally argues that the Glastra reference also fails to disclose a balloon with "essentially tubular" sections. As mentioned above, claims are given their broadest reasonable interpretation and since the balloon of Glastra's catheter presents a conduit configuration with a hollow cross-section, it clearly can be construed to have sections that are "essentially tubular".

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Pellegrino whose telephone number is 571-272-4756. The examiner can normally be reached on Monday-Friday from 7:30am to 5pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TC 3700, AU 3738

BRIAN E. PELLEGRINO
PRIMARY EXAMINER

